

ESTTA Tracking number: **ESTTA569698**

Filing date: **11/07/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	GWIL Industries Inc.
Granted to Date of previous extension	11/10/2013
Address	5337 Regent Street Burnaby, BC V5C 4H4 CANADA

Attorney information	Kevin M. Hayes Klarquist Sparkman, LLP 121 SW Salmon Street, Suite 1600, One World Trade Center Portland, OR 97204 UNITED STATES kevin.hayes@klarquist.com, ptotmdocket@klarquist.com Phone:503-595-5300
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Applicant Information

Application No	85806354	Publication date	05/14/2013
Opposition Filing Date	11/07/2013	Opposition Period Ends	11/10/2013
Applicant	BIRTLEY INDUSTRIAL EQUIPMENT CORPRATION 2333 INNOVATION DR LEXINGTON, KY 40511 ISRAEL		

Goods/Services Affected by Opposition

Class 007. First Use: 2010/01/01 First Use In Commerce: 2010/01/01 All goods and services in the class are opposed, namely: Coal and mineral processing equipment, namely, centrifuges, cyclones, screens and dryers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	BIRTLEY		
Goods/Services	coal and mineral testing services and geochemical analysis, analysis and beneficiation of coal and related bulk handling and sample preparation services		

Attachments	BIRTLEY Opposition.pdf(1635466 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kevin M. Hayes/
Name	Kevin M. Hayes
Date	11/07/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GWIL Industries Inc.,)	
)	
Opposer,)	NOTICE OF OPPOSITION
)	
v.)	
)	Opposition No.: _____
Birtley Industrial Equipment Corporation,)	App. No. 85806354
)	
Applicant.)	

In re trademark application of: Birtley Industrial Equipment Corporation

Serial No.: 85806354

Filed: December 19, 2012

Mark: BIRTLEY & Design

International Class: 07

Published in *Official Gazette*: May 14, 2013

NOTICE OF OPPOSITION

COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313

GWIL Industries Inc., located and doing business at 5337 Regent Street Burnaby, BC Canada V5C4H4 ("GWIL" or "Opposer"), believes that it will be damaged by registration of the mark BIRTLEY & Design shown in application Serial No. 85806354 for coal and mineral processing equipment, namely, centrifuges, cyclones, screens and dryers (the "Opposed Application").

The grounds for the opposition are as follows:

1. Opposer, through its Birtley Coal & Minerals Testing Division, has been offering coal and mineral testing services and geochemical analysis, analysis and beneficiation of coal and related bulk handling and sample preparation services (“Opposer’s services”) in the United States under its trademark BIRTLEY for at least over four decades (“Opposer’s BIRTLEY mark”).
2. The purchasing public has come to know, rely upon, and associate Opposer’s BIRTLEY mark with Opposer and to recognize Opposer’s services by Opposer’s BIRTLEY mark. Opposer has established valuable goodwill in Opposer’s BIRTLEY mark.
3. Opposer adopted and used its BIRTLEY mark well before the December 19, 2012, filing date of the Opposed Application.
4. The Opposed Application identifies: coal and mineral processing equipment, namely, centrifuges, cyclones, screens and dryers.
5. Coal and mineral processing equipment, namely, centrifuges, cyclones, screens and dryers are related to coal and mineral testing services and geochemical analysis, analysis and beneficiation of coal and related bulk handling and sample preparation services, and customers and potential customers for Opposer’s services in many cases would be customers or potential customers for the goods and services identified in the Opposed Application.
6. Companies that offer coal and mineral processing equipment, namely, centrifuges, cyclones, screens and dryers attend the same conferences as companies that offer coal and mineral testing services and geochemical analysis, analysis and beneficiation of coal and related bulk handling and sample preparation services.

7. The “International Coal Prep” conference, for example, has been attended by Applicant - and that conference includes attendees that offer analysis and sampling services (as shown in the screen capture from Applicant’s website at www.birtley.us attached as Exhibit 1 and the screen capture from the website for the International Coal Prep Conference at www.coalprepshow.com attached as Exhibit 2).

8. The mark of the Opposed Application is dominated by the word BIRTLEY.

9. The mark of the Opposed Application is identical in sound to the word BIRTLEY.

10. The Patent and Trademark Office stated in an Office action refusing Opposer’s application 85838424 for BIRTLEY for “coal and mineral testing services and geochemical analysis, analysis and beneficiation of coal and related bulk handling and sample preparation” that: “[i]f the mark in the referenced application [, the Opposed Application,] registers, applicant’s mark may be refused registration under Section 2(d) because of a likelihood of confusion with the registered mark(s).”

11. Indeed, the mark of the Opposed Application so resembles Opposer’s BIRTLEY mark as to be likely to cause confusion, mistake, or to deceive consumers, within the usage and meaning of Section 2(d) of the Trademark Act of 1946, as amended, when used by Applicant on or in connection with Applicant’s goods identified in the Opposed Application.

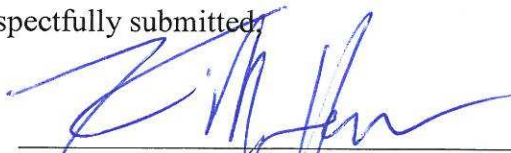
WHEREFORE, Opposer deems that it will be injured and damaged by registration of the mark of application Serial No. 85806354 and Opposer requests that this opposition be sustained, that said application be rejected, and that no registration be issued thereon.

This Notice of Opposition is being filed together with the filing fee stated in 37 C.F.R. § 2.6(a)(17).

Dated: November 7, 2013

Respectfully submitted,

By

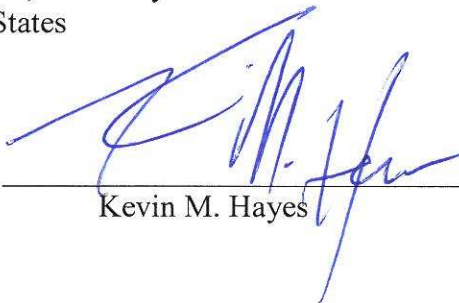


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Portland, Oregon 97204
Telephone: (503) 226-7391
Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 7, 2013, a true copy of the foregoing **Notice of Opposition** was served on Applicant at the Correspondence Address listed for the Opposed Application by first class mail, postage prepaid, to:

Birtley Industrial Equipment Corporation
2333 Innovation Dr.
Lexington, Kentucky 40511-8514
United States



Kevin M. Hayes

EXHIBIT 1

http://www.birtley.us/en/news MSN.com News

English | 中文


Birtley

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WORK FOR BIRTHDAY

News


► **Birtley Welcomes New VP of US Sales**
2013-06-26

 Birtley is pleased to announce that Mr. Vernon Reynolds has accepted the role of Vice President of US sales.

In his role, Mr. Reynolds will further develop, lead, and implement the company's overall sales strategy and initiatives, in supporting Birtley's growth as a leading manufacturer and supplier of quality coal preparation equipment.


[Read More >](#)


► **Visit us at the 2013 Int'l Coal Prep Expo in Lexington, KY, April 30-May 2**
2013-04-10

 Birtley will participate in the 2013 International Coal Prep Expo in Lexington, Kentucky from April 30 to May 2. Coal Prep is the ONLY annual trade show & conference in the U.S. dedicated to coal preparation and processing.

We look forward to sharing our latest design ideas and coal processing technologies with you at the show.

Time: April 30-May 2, 2013 | Venue: Lexington Center, KY, USA | Birtley Booth: #930

 **CLONES**



Monday, November 04, 2013

EXHIBIT 2

http://www.coalprepshow.com/CoalPrep2014/Public/Content.aspx?ID=3049722 Coal Prep 2014: Conference

Find: BIRTLEY Previous Next Options

Coal Prep International 2014

Annual Coal Processing Exhibition and Conference
conference: april 28 – may 1 • exhibit hall: april 29 – may 1
lexington center • lexington, ky

exhibitor info/login
Select Language

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TERRASOURCE GLOBAL
Handling a World of Materials

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JEFFREY & RADIN
Pennsylvania Crusher
Coal Prep Booth 311

Home Register Conference Floor Plan Exhibitor List Special Events Media Travel

Coal Prep's 2014 Conference Program

Operator Workshops Announced for 2014

Quick Links

- Registration Information/Pricing
- Agenda
- Download the 2014 Preliminary Attendee Brochure
- Convince Your Boss - The Value of Coal Prep
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Conference Technical Program organized by:

CPSA Coal Preparation Society of America

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Coal Age

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- Leading-edge education that will build your skills and increase your professional stature
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- Innovative processes to improve your plant operation
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For The Press

Floor Plan

Monday, November 04, 2013